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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of the Commission's)
Rules Regarding Installment Payment)
Financing For Personal Communications)
Services (PCS) Licenses)

WT Docket No. 97-82

PETITION FOR EXTENSION OF INTEREST PAYMENT DATE

To: The Commission

Urban Comm-North Carolina, Inc. ("Urban Comm"), pursuant to section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, and Section 416(b) of the Communications Act, 47 U.S.C. § 416(b), respectfully requests that the Commission extend the interest payment date for C Block and F Block PCS licensees established by the Commission in the Order on Reconsideration of the Second Report and Order¹ (the "Reconsideration Order") in the above-captioned proceeding.

In the Reconsideration Order, the Commission set July 31, 1998 as the date on which C and F Block Broadband PCS licensees were required to recommence interest payments on their licenses. The Reconsideration Order also established a grace period which provided licensees until October 29, 1998 to make their July 31, 1998 payment and imposed a five percent late fee on all payments received between July 31, 1998 and October 29, 1998. Reconsideration Order at Para. 15. Urban Comm hereby requests an extension of this grace period.

In requesting an extension of the grace period, Urban Comm is mindful of the Commission's very clearly stated desire to make October 29, 1998 the last date that licensees may make their

¹ In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Order on Reconsideration of the Second Report and Order, WT Docket No. 97-82, FCC 98-46, 63 Fed. Reg. 17111 (March 28, 1998).

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quarterly interest payment. However, due to the collapse of the financial markets that occurred after the Commission issued its Reconsideration Order, Urban Comm and many other C Block licensees have been precluded from obtaining the financing necessary to pay to the Commission its interest payments. Unless the Commission grants the 180 day extension that Urban Comm seeks, Urban Comm and many other C block licensees will be unable to pay the Commission the interest payments due on October 29, 1998 and may be forced to seek bankruptcy protection. The instant financial market situation is clearly out of Urban Comm's control and its inability to obtain financing has come about despite Urban Comm's best efforts. Urban Comm has spent all of 1998 aggressively seeking financing in order to permit Urban Comm to pay its quarterly interest payment by October 29, 1998, and to provide Urban Comm with the funds necessary to construct and operate its PCS system. In fact, Urban Comm was in the process of negotiating a transaction that would have allowed it to obtain the financing it required to both meet its obligations to the Commission and construct and commence operation of its PCS system when the public and private debt and equity markets collapsed in July and August of this year.

As a result of this financial market collapse, the financing sources with which Urban Comm was negotiating were forced to suspend their discussions with Urban Comm. In so suspending their discussions, the financing sources explained that the financial market collapse, not deficiencies in Urban Comm's business plan, precluded them from providing Urban Comm with the necessary financing at this time. Thus, the financing sources specifically indicated that, if and when the financial market recovers, they would consider resumption of discussions with Urban Comm regarding the provision of the financing Urban Comm needs.

Implicit in the Commission's decision to provide licensees such as Urban Comm with a grace

period for making quarterly interest payments was a recognition by the Commission that financial circumstances may change, and that such licensees need flexibility and should not be subject to the severe penalty of forfeiture of their licenses due to events that are clearly beyond their control. The Commission can and should take judicial notice of the tortured history of the C Block as well as the substantial changes that have occurred in the PCS industry and the financial markets since the Commission released its Reconsideration Order on March 28, 1998.

Throughout this proceeding (indeed, throughout the history of the C Block), Urban Comm has expressed to the Commission its concern that many of the decisions made by the Commission about C Block licensees and many of the obligations imposed upon C Block licensees by the Commission fail to provide C Block licensees with the flexibility necessary to adequately compensate for the problems that are unique to the C Block licensees. Now, faced with the imminent specter of bankruptcy, the concerns Urban Comm has attempted to impress upon the Commission take on a new sense of urgency.

In its Petition for Reconsideration filed with the Commission on November 27, 1998, Urban Comm explained the difficulties that had beset C Block licenses since before the C Block auction began. Petition for Reconsideration at 3-5. C Block licensees were initially hampered by the fact that the C Block auction ended fourteen months after the conclusion of the A and B block auction. Then, after the conclusion of the C Block auction, C Block licensees were dealt a double blow when, contrary to all previous indicators, the market for wireless stocks drastically downturned, delaying C Block financing, and giving the incumbents that won A and B Block licenses an even greater head start. The problems suffered by C Block licensees were further compounded by the Commission's decision to auction large blocks of spectrum for other services that would directly compete with the

C Block licensees for potential subscribers. These auctions included the Wireless Communications Service ("WCS"), which commenced in November of 1996, and the 800 MHz Specialized Mobile Radio Service ("SMR") and Local Multipoint Distribution Service ("LMDS"), which commenced in July of 1997. Further unexpected competition was introduced by the Commission when it allocated to each existing television broadcaster, free of charge, an additional six megahertz of spectrum, which the television broadcasters will be able to offer as subscription based messaging services, as well as for digital television broadcast. Given the abundance of new competitive telecommunications ventures to invest in and the continuing uncertainties which swirled around the C Block, Wall Street lost much of its initial enthusiasm to invest in C Block licensees. Petition for Reconsideration at 3-4.

As a result, several parties jointly requested that the Commission relieve them of their installment payment obligations. In response to these requests for relief, the Commission suspended the deadline for payment of installment debt for C Block licensees on March 31, 1997 and suspended the installment payment deadline for F Block licensees shortly thereafter on April 28, 1997 and, in the Installment Payment Public Notice requested public comment regarding how to restructure C and F Block installment payment obligations. The Commission received over 160 filings, including several filings from Urban Comm, in response to this request. Petition for Reconsideration at 4-5.

In its Comments and ex-parte filings, and later in its Petition for Reconsideration, Urban Comm repeatedly advised the Commission that, in order to provide C Block licensees with a reasonable chance to obtain the necessary financing in the rapidly souring financial market, it should extend the date for resumption of installment payments to March 1, 1999. Petition for Reconsideration at 5. The Commission rejected Urban Comm's request. Reconsideration Order at

Para. 24, n.43. Instead, the Commission chose to require all C Block licensees to elect one of the four options adopted by the Commission in its Second Report and Order, as slightly modified by the Reconsideration Order, and to make such election on June 8, 1998, 60 days after the Reconsideration Order's April 8, 1998 publication in the Federal Register. Reconsideration Order at Para. 23.

On May 29, 1998, Urban Comm filed a Petition for Stay of the June 8, 1998 election date.

In its Petition for Stay, Urban Comm pointed out that:

the recent GWI [bankruptcy court] decision introduces even more uncertainty into the financial marketplace as investors and C block licensees consider the attractiveness of a 'fifth option' of bankruptcy. GWI's avoidance of approximately 84% of its winning bid amount and retention of the beneficial ownership and use of licenses² is the type of restructuring option many C block licensees petitioned the Commission to provide in its reconsideration of both the Second Report and Order and the Reconsideration Order. These changed circumstances combined with the uncertainty surrounding the key issues that have yet to be resolved by the Commission overwhelmingly support granting a stay.

* * *

Investors have been, and continue to be, hesitant to enter into financing arrangements with entrepreneur C Block licensees. Market uncertainty and the fact that the Commission has yet to resolve certain key issues make financial arrangements even more difficult. The addition of a Chapter 11 bankruptcy option also contributes to the tenuous nature of any business decisions and to the current market conditions. Such uncertainty affects the very viability of Urban Comm and other C block entrepreneurs. Requiring entrepreneur C block licensees to make irrevocable business decisions in an environment of serious regulatory uncertainty is certain to result in irreparable injury.

Petition for Stay at 4-5. The Commission did not act on Urban Comm's stay request..

Then, on June 8, 1998, the date that C Block licensees were required to make their elections, NextWave, the largest C Block licensee, filed for Chapter 11 bankruptcy protection. This sent yet

² In re GWI PCS, Inc., No 397-39676-SAF-11 (Bankr. ND. Tex.; Bench Ruling, April 24, 1998).

another shockwave through the financial markets.

In spite of these obstacles, Urban Comm has diligently and painstakingly pursued financing and had neared negotiation of financing before the recent financial market collapse. While the Commission made it very clear that it did not anticipate any further extension of the grace period, the Commission cannot ignore the violent collapse of the financial markets. During the twenty-eight day period between the August 27, 1998 initial public offering by BankFirst and the September 24, 1998 initial public offering by eBay, there were no initial public offerings or public high yield debt offerings in the United States in any industry, and very little financing activity has occurred since.

Thus, changed circumstances have fundamentally altered the business environment from that which existed on March 28, 1998, when the Commission issued the Reconsideration Order. Urban Comm submits that because of these changed circumstances, Urban Comm and many other C Block licensees have been unable to obtain the financing necessary to meet their obligations to the Commission, and therefore, these changed circumstances strongly support Urban Comm's request that the Commission provide relief for C Block licensees, such as Urban Comm, which in spite of all reasonable efforts have been unable to secure financing, and will need to seek bankruptcy protection if relief is not provided.

An extension of the C Block grace period for an additional 180 days would provide such licensees with the additional opportunity to secure the financing they require to avoid defaulting on their obligations to the Commission and is therefore appropriate. In order to limit the impact of such an extension, Urban Comm suggests that the proposed extension should be limited to the currently due payment and should not be extended to any future payments due to the Commission.

The 180 day grace period that Urban Comm proposes would minimally impact the current

C Block payment schedule. Section 1.2110(f)(4)(ii) of the Commission's Rules provides that, with respect to the second installment payment currently due on October 29, 1998, licensees can already utilize a 180 day grace period, which includes a late fee of ten percent. Thus, Urban Comm proposes that C Block licensees be permitted to pay, 180 days after October 29, 1998, the amounts owed for the first and second installment payments with a 15% late fee on the first installment payment³ and the 10% late fee specified in Section 1.2110(f)(4)(ii) of the Commission's Rules on the second installment payment.

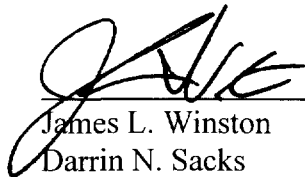
The relief that Urban Comm requests will not harm other C Block licensees and is clearly in the public interest. Other C block licensees should welcome Urban Comm's proposed extension. This extension will provide licensees with additional time for licensees to secure financing. Moreover, the requested relief will enable the Commission to fulfill its statutory obligation under 47 U.S.C. § 309(j) by making opportunities available to small businesses. Economic opportunity and competition will be served by granting the extension Urban Comm requests because it will provide C block licensees with the opportunity to be viable competitors in the wireless telephone market and will allow consumers to receive valued services at reasonably competitive prices. Finally, grant of the extension Urban Comm requests will obviate the need for Urban Comm and many other C Block licensees to declare bankruptcy and will thereby serve the public interest by permitting Urban Comm and many other C Block licensees to pay their obligations to the Commission and construct their PCS facilities, rather than being tied up in protracted bankruptcy reorganization proceedings.

³ The 15% late fee would represent the sum of the 5% late fee due on October 29, 1998 and the 10% late fee specified in Section 1.2110(f)(4)(ii) of the Commission's Rules.

Conclusion

For the foregoing reasons, the Commission should extend the C Block and F Block grace period currently set to expire on October 29, 1998 for a period of 180 days, subject to a late fee of fifteen percent, due at that time. Urban Comm submits that changed circumstances require such relief, and that the public interest will be served by such Commission action.

Respectfully submitted,



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